

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:	Charles G. Hwang et al.	Examiner:	Witczak, Catherine
Application No.:	10/691,385	Group Art Unit:	3767
Confirmation No.:	8673	Docket No.:	102-539 CIP/RCE III (P-6048/1)
Filing Date:	October 22, 2003	Dated:	December 28, 2009
Title:	SYRINGE TIP CAP		

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Sir:

Pursuant to 37 C.F.R. §41.41, Appellants file this Reply Brief in response to the Examiner's Answer of October 28, 2009. Appellants address particular points and continue to rely on the Arguments of their main Appeal Brief.

I. Definition of "Syringe"

In the Examiner's Answer, particularly at p. 4, the Examiner cites for the first time an on-line medical dictionary for the definition of a syringe. As set forth in the Examiner's Answer, the Examiner stated that the definition of a syringe is: "a device used to inject fluid into or withdraw them from something." However, the Examiner did not quote the full definition found at the provided on-line citation.

(<http://www.nlm.nih.gov/medlineplus/medlineplusdictionary.html>). The full definition found therein is as follows:

a device used to inject fluids into or withdraw them from something (as the body or its cavities): as **a**: a device that consists of a nozzle of varying length and a compressible rubber bulb and is used for injection or irrigation <an ear syringe> **b**: an instrument (as for the injection of medicine or the withdrawal of bodily fluids) that consists of a hollow barrel fitted with a plunger and a hollow needle **c**: a gravity device consisting of a reservoir fitted with a long rubber tube ending with an exchangeable nozzle that is used for irrigation of the vagina or bowel.

It is clear that the definition provided by the Examiner refers to a device for injecting or withdrawing fluids from the "body or its cavities". The device is particularly one of three devices, listed as a, b, and c in the definition. The devices specified at a and c are flushing-type devices. The device described at b, namely "an instrument (as for the injection of medicine or the withdrawal of bodily fluids) that consists of a hollow barrel fitted with a plunger and a hollow needle", matches the definition of a "syringe" provided by Appellants. Thus, taking into consideration the new definition raised by the Examiner, and in view of the relevant specification, the term "syringe" in the Claims on appeal must be construed as a syringe for medical injections. Adams does not disclose a syringe for medical injections.

At p. 4 of the Examiner's Answer, the Examiner admitted that "the components of the syringe of Adams may not structurally resemble Appellant's syringe". Thus, the Examiner admits that the Adams device is distinguishable from a syringe for medical injections. It is respectfully submitted that Claims 1 and 15 are not anticipated by Adams.

II. Rowekamp is Directed to a Container, not Closure

At the bottom of p. 5 of the Examiner's Answer, the Examiner asserted that it would have been obvious to modify the "*upper* portion" of Wallace with "the *upper* noncircular portion of Rowekamp". As set forth in Appellants' main brief, Rowekamp does not include an upper noncircular portion.

Moreover, there is no basis to modify the upper portion of Wallace with Rowekamp. Rowekamp is directed to a container, particularly, a container which is ovate in shape. (Col. 1, ll. 5-7; col. 2, ll. 25-40). Rowekamp is further directed to providing a removable closure cap for an ovate container which is removable by one quarter-turn. (See, e.g., col. 2, ll. 45-47). The closure cap is in the form of an overcap 30 having a cap member 32, an extended planar top portion 34, and an ovate skirt 36. (Col. 3, ll. 23-24). The skirt 36 is formed such that "when in closed position to superpose the periphery of the top plan surface 20 of the container body 12." (Col. 3, ll. 24-27). In closed position, the skirt 36 and the container body 12 are in alignment. (Col. 3, ll. 33-35).

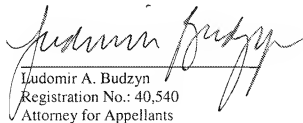
Based on Rowekamp, the skirt 36 is formed to the shape of the associated container. The thrust of Rowekamp is to achieve a quarter-turn mounting. With Rowekamp being read in its entirety, a skirt would be provided which conforms to the shape of the associated

container and is mountable by a quarter-turn. As quoted above, the skirt 36 is to "superpose the periphery" of the container body. (Col. 3, ll. 24-27). Any hypothetical combination of Rowekamp and Wallace would result in the use of the quarter-turn release. In addition, the skirt would conform to the associated container shape. With Wallace having a circular shape, there is no basis to alter the circular shape to a noncircular shape. It is respectfully submitted that Claims 1 and 15 are patentable over Rowekamp and Wallace.

III. Conclusion

For the reasons set forth herein and in Appellants' main Appeal Brief, Claims 1 and 15, along with dependent Claims 2, 8, 9, 11, 12, 14, 16, 22-24, 28, 31-34, 37 and 38, are patentable over the cited references. Favorable action is earnestly solicited and a finding of patentability of Claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, 31-34, 37, and 38 is respectfully requested.

Respectfully submitted,



Ludomir A. Budzyn
Registration No.: 40,540
Attorney for Appellants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700